

use of funds appropriated thereunder for sale of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States which will be exported from the United States, or which will be used as a substitute for timber from private lands which is exported by the purchaser. The law also provides that the export restriction shall not apply to specific quantities of grades and species of timber which the Secretary of the Interior determines to be surplus to domestic lumber and plywood manufacturing needs.

(d) Authority for small sales of timber for use in Alaska is contained in the Act of May 14, 1898, as amended (16 U.S.C. 615a).

(e) Authority to enforce the provisions of this title is contained in the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*).

[37 FR 22797, Oct. 25, 1972, as amended at 41 FR 12659, Mar. 26, 1976; 56 FR 10174, Mar. 11, 1991]

#### § 5400.0-5 Definitions.

Except as the context may otherwise indicate, as the terms are used in parts 5400-5490 of this chapter and in contracts issued thereunder:

*Affiliate* means a business entity including but not limited to an individual, partnership, corporation, or association, which controls or is controlled by a purchaser, or, along with a purchaser, is controlled by a third business entity.

*Authorized Officer* means an employee of the Bureau of Land Management, to whom has been delegated the authority to take action.

*Bureau* means the Bureau of Land Management, Department of the Interior.

*Commercial use* means use intended for resale, barter, or trade, or for profit.

*Director* means the Director of the Bureau of Land Management.

*Fair Market value* means the price for best products will return when offered for competitive sale on the open market. Determination of fair market value will be made in accordance with procedures in BLM Manual 9354.

*Federal lands* means all lands administered by the Department of the Interior west of the 100th meridian in the contiguous 48 States with the exception of tribal and trust allotted lands managed by the Bureau of Indian Affairs on behalf of the Indians.

*Federal timber* means timber sold by the Bureau of Land Management as used under these regulations.

*Incidental use* means personal use of other vegetative resources on the site where they are obtained, or, if they are transported to a secondary location, personal use of the resources within a reasonable period of time by the person obtaining them.

*Loading point* means any landing or other area in which logs are capable of being loaded for transportation out of the contract area: *Provided, however*, That right-of-way timber which has been cut shall not be considered to be at a loading point until such time as logs from any source are actually transported over that portion of the right-of-way.

*Nonwillful* means an action which is inadvertent, mitigated in character by the belief that the conduct is reasonable or legal.

*O. and C. Lands* means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands and other lands administered by the Bureau of Land Management under the provisions of the Act of August 28, 1937 (50 Stat. 874).

*Operating season* means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

*Operating time* means a period of time during the operating season.

*Other vegetative resources* means all vegetative material that is not normally measured in board feet, but can be sold or removed from public lands by means of the issuance of a contract or permit.

*Permit* means authorization in writing by the authorized officer or other person authorized by the United States Government, and is a contract between the permittee and the United States.

*Personal use* means use other than for sale, barter, trade, or obtaining a profit.

*Product value* means the stumpage value of timber or the fair market value of other vegetative resources.

*Public lands* means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership.

*Purchaser* means a business entity including, but not limited to, an individual, partnership, corporation, or association that buys Federal timber or other vegetative resources.

*Sale value* means the contract value of the stumpage sold under the contract.

*Set-aside* means a designation of timber for sale which is limited to bidding by small business concerns as defined by the Small Business Administration in its regulations (13 CFR part 121) under the authority of section 15 of the Small Business Act of July 18, 1958 (72 Stat. 384).

*Substitution* means:

(1) The purchase of a greater volume of Federal timber by an individual purchaser than has been his historic pattern within twelve (12) months of the sale of export by the same purchaser of a greater volume of his private timber than has been his historic pattern during the preceding twelve (12) months, exclusive of Federal timber purchased by negotiated sale for right-of-way purposes, and

(2) The increase of both the purchase of Federal timber and export of timber from private lands tributary to the plant for which Bureau of Land Management timber covered by a specific contract is delivered or expected to be delivered.

*Third party scaling* means the measurement of logs by a scaling organization, other than a Government agency, approved by the Bureau.

*Timber* means standing trees, downed trees or logs which are capable of being measured in board feet.

*Trespass* means the severance, removal, or unlawful use of timber or other vegetative resources without the consent (authorization) of the Federal

Government, or failure to comply with contract or permit requirements that causes direct injury or damage to timber or other vegetative resources, or undue environmental degradation.

*Trespasser* means any person, partnership, association, or corporation responsible for committing a trespass.

*Unprocessed timber* means:

(1) Any logs except those of utility grade or below, such as sawlogs, peeler logs, and pulp logs;

(2) Cants or squares to be subsequently remanufactured exceeding eight and three-quarters (8¾) inches in thickness;

(3) Split or round bolts, or other roundwood not processed to standards and specifications suitable for end product use.

*Willful* means a knowing act or omission that constitutes the voluntary or conscious performance of a prohibited act or indifference to or reckless disregard for the law.

[35 FR 9783, June 13, 1970, as amended at 38 FR 6280, Mar. 8, 1973; 41 FR 12659, Mar. 26, 1976; 41 FR 31381, July 28, 1976; 56 FR 10175, Mar. 11, 1991; 57 FR 62235, Dec. 30, 1992]

**§ 5400.0-7 Public hearings to determine surplus quantities and species of unprocessed timber.**

(a) Public hearings will be held when authorized by the Director to seek advice and counsel as to the specific quantities of grades and species of unprocessed timber surplus to the needs of domestic users and processors. Such species and quantities thereby determined to be surplus by the Secretary, may be designated as available for export by the Secretary.

(b) Such hearings will be coordinated with the Department of Agriculture and held at convenient, centralized locations within the range of the species under consideration.

(c) Before any hearing is held in this regard, a notice will be published in a newspaper of general circulation within the range of the species under consideration at least 15 days prior to the hearing. In addition, known parties or groups with special interest in the species concerned should be notified directly. The record of the hearing shall be kept open for at least 5 consecutive calendar days from the date of the